BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RICK RONALD WYER	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,002,388
ZENITH DRILLING CORPORATION	)	
Respondent	)	
AND	)	
	)	
LEGION INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent appeals the July 21, 2003 preliminary hearing Order of Administrative Law Judge Pamela J. Fuller. Respondent contends that claimant's injury did not arise out of and in the course of his employment as it occurred as the result of a personal fight between claimant and another worker. Claimant contends that the fight developed out of the incidents of employment and should, therefore, be compensable. Respondent acknowledges that the injury to claimant occurred in the course of his employment, but denies that the accidental injury arose out of claimant's employment.

ISSUES

Did claimant suffer accidental injury arising out of and in the course of his employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant and a coworker by the name of Stuart Tull were involved in an altercation on September 20, 2001. As a result of this altercation, claimant suffered injury to his legs and back. Claimant and Mr. Tull had had a history of animosity, as Mr. Tull blamed

claimant for Mr. Tull's brother Marvin quitting his employment with respondent. However, there had been no previous physical contact between the two.

Incidents leading up to the September 20 accident involved cotton seed hull bags. The employees of respondent would use the seed hulls to fill empty spaces left by the drilling rig when drilling for oil. The derrick hands would return these bags to the manufacturer in exchange for a nominal amount of money of approximately $.25 per bag. While it was not a company rule or mandate for the employees to return these bags, it did affect the safety of the work area. Therefore, returning the bags was of benefit both to claimant and to respondent.

In the days leading up to the injury, it was alleged that Mr. Tull had taken cotton seed hull bags from claimant on three separate occasions. Just prior to the injury, claimant noticed several bags in Mr. Tull's vehicle and, believing that Mr. Tull had stolen bags from him in the past, took the bags from Mr. Tull's vehicle. Mr. Tull contacted Randy Pierce, the supervisor on duty, and, assuming that it was claimant who had stolen the bags, told Mr. Pierce if claimant did not return the bags, claimant would have "an ass-whoopin' coming."[1] When claimant was told of this threat, he laughed. It was apparent from the witness testimony that neither claimant nor the employees or representatives of respondent took this threat seriously.

On the morning of September 20, when claimant arrived at work, he saw Mr. Tull sitting on the hood of a vehicle. Before claimant had the opportunity to speak to Mr. Tull, Mr. Tull rushed claimant, colliding with claimant, causing him the injuries.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.[2] As noted above, respondent acknowledges that the injury to claimant occurred in the course of employment. However, in order for a claim to be compensable, the injury must arise both in the course of and "out of" the employment. An injury arises "out of employment" if it arises out of the nature, conditions, obligations and incidents of the employment.[3]

The Kansas Court of Appeals has determined that, when an injury results from an assault by a coworker, whether that injury "arose out of the employment" depends upon the nature of the incidents and the motives and actions of the aggressor. Altercations that result solely from personal animosity between the employees are not compensable unless

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[1] Pierce Depo. at 10.

[2] *See* K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

[3] *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

foreseeable.[4] As noted above, there is no evidence that this altercation was foreseeable as, while there was a history of animosity between the two, there was no history of fighting or any type of physical contact.

It is generally accepted that if the assault grew out of an argument over the performance of the work, the injury is compensable.[5] There must be a causal connection between the work or the conditions under which the work was required to be performed and the resulting injury.[6]

This assault on claimant occurred as a result of a dispute between claimant and Mr. Tull over the cotton seed hull bags. While there was no obligation on the part of the derrick workers to remove the bags, it was a common practice among the workers and benefitted both the workers, due to the income generated, and the employer, due to the resulting maintenance of the work area.

> It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.[7]

The Board finds that the dispute between claimant and Mr. Tull originated out of an argument over the cotton seed hull bags, which was incidental to their employment. The Board, therefore, finds that claimant has proven that he did suffer accidental injury arising both out of and in the course of his employment with respondent and the Award of the Administrative Law Judge granting benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Pamela J. Fuller dated July 21, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

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[4] *Harris v. Bethany Medical Center*, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

[5] 1 *Larson's Workers' Compensation Law* § 11.12(b).

[6] *Brannum v. Spring Lakes Country Club, Inc.*, 203 Kan. 658, 455 P.2d 546 (1969).

[7] K.S.A. 44-501(g).

Dated this ____ day of September 2003.

BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Director